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Special Counsel for Fire Victim Trustee

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

-and-

PACIFIC GAS AND ELECTRIC
COMPANY,
Debtors.

JUSTICE JOHN TROTTER (RET.),
TRUSTEE OF THE PG&E FIRE VICTIM
TRUST,

Plaintiff,

v.

PG&E CORPORATION, PACIFIC GAS &
ELECTRIC COMPANY, ASSOCIATED
ELECTRIC & GAS INSURANCE
SERVICES LIMITED, ENERGY
INSURANCE MUTUAL LIMITED, NORTH
AMERICAN SPECIALTY INSURANCE
COMPANY, GREAT LAKES
REINSURANCE (UK) SE, ENDURANCE

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

Adv. Pro. 21-03012

San Francisco Superior Court
Case No. CGC-21-590296

**DECLARATION OF FRANK M. PITRE IN
SUPPORT OF FIRE VICTIM TRUSTEE'S
MOTION FOR ENTRY OF AN ORDER
ABSTAINING FROM HEARING
REMOVED ACTION AND REMANDING
TO STATE COURT**

Date: April 20, 2021

Time: 9:30 AM (Pacific Time)

Place: **Via Zoom Webinar**

United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 98102

Objection Deadline: April 13, 2021

4:00 p.m. (Pacific Time)

1 RISK SOLUTIONS ASSURANCE
2 COMPANY, BERKLEY INSURANCE
3 COMPANY, AMERICAN
4 INTERNATIONAL REINSURANCE
5 COMPANY, LTD., ALLIANZ GLOBAL
6 RISKS US INSURANCE COMPANY,
7 LIBERTY INSURANCE UNDERWRITERS,
8 INC., STARR INDEMNITY & LIABILITY
9 COMPANY, U.S. SPECIALTY
10 INSURANCE COMPANY, CONTINENTAL
11 CASUALTY COMPANY, BARBICAN
12 MANAGING AGENCY LIMITED, TWIN
13 CITY FIRE INSURANCE COMPANY,
14 ARGONAUT INSURANCE COMPANY,
15 HOUSTON CASUALTY COMPANY, and
16 DOES 1-20, inclusive,

Defendants.

11
12 I, Frank M. Pitre, pursuant to section 1746 of title 28 of the United States Code, hereby declare
13 under penalty of perjury that the following is true and correct to the best of my personal knowledge
14 and belief:

15 1. I am an attorney at law admitted to practice law before all courts in the State of
16 California and in the United States District Court for the Northern District of California. I am a
17 partner at Cotchett, Pitre & McCarthy LLP (“CPM”). CPM was engaged by the Honorable John K.
18 Trotter (Ret.), in his capacity as the Trustee (the “**Trustee**”) of the PG&E Fire Victim Trust (the
19 “**Trust**”) to prosecute certain claims and causes of action relating directly or indirectly to any of the
20 2017 North Bay Fires or 2018 Camp Fire that PG&E Corporation and Pacific Gas and Electric
21 Company (collectively, the “**Debtors**” or “**Reorganized Debtors**”) have against their former
22 directors and officers (the “**D&O Claims**”), which claims were assigned to the Trust for the benefit
23 of its beneficiaries. Prior to CPM’s engagement by the Trust, I served as a member of the Tort
24 Creditor’s Committee and was actively engaged in the negotiations which led to the resolution of the
25 Fire Victims’ claims against the Debtors. The facts set forth below are based on my direct personal
26 involvement in the events set forth and fell within the scope of my responsibilities assigned by the
27 Trust.

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1 2. The Trust's recovery from the D&O Claims is limited solely to the extent of any
2 director and officer insurance policy proceeds paid by any insurance carrier (all such carriers,
3 collectively, the "**Insurance Carriers**") to reimburse the Reorganized Debtors for amounts paid
4 pursuant to their indemnification obligations to such former directors and officers (the "**Side B**
5 **Insurance Coverage**"). The Side B Coverage is one of three silos of coverage under the director
6 and officer liability policies of the Debtors (the "**D&O Policies**").

7 3. Pursuant to CPM's engagement by the Trust, CPM serves as co-counsel for the Trust
8 in related actions filed in the Superior Court of California for the County of San Francisco (the "**State**
9 **Court**"), with the lead case entitled, *John Trotter (Ret.), Trustee of the PG&E Fire Victim Trust v.*
10 *Williams et al.*, Case No. CGC-17-562591 (the "**D&O Actions**"). The D&O Actions are assigned
11 for all purposes to State Court Judge Andrew Y.S. Cheng.

12 4. The Reorganized Debtors commenced an arbitration with the Insurance Carriers to
13 resolve disputes regarding the scope of insurance coverage provided by the D&O Policies for claims
14 against Officers and Directors of the Debtors during the 2017 and 2018 policy periods, including the
15 shareholder derivative claims (the "**Arbitration**"). A hearing has been set in the Arbitration for April
16 30, 2021.

17 5. On behalf of the Trustee and Trust, I requested that the Trust be allowed to intervene
18 and participate in the Arbitration since the D&O Policies are the sole source of the Trust's recovery
19 for the D&O Claims. I was informed by James Brandt of Latham & Watkins, counsel the
20 Reorganized Debtors, that the Arbitration Panel denied my request for the Trust to intervene and
21 participate in the Arbitration. Despite repeated requests, I have not to this date received any written
22 ruling articulating the Arbitration Panel's basis for denying the Trust's request to intervene and
23 participate in the Arbitration.

24 6. On March 17, 2021, I caused a *Complaint for Declaratory Relief Pursuant to*
25 *California Civil Code Section 1060*, Case No. CGC-21-590296 (the "**Declaratory Relief Action**")
26 to be filed on behalf of the Trust in State Court.

27 7. The Declaratory Relief Action seeks judicial declarations that: (1) the Trust is an
28 indispensable party to any current or future arbitrations and/or judicial proceedings between the

1 Reorganized Debtors and the Insurance Carriers regarding insurance issues, including the amount of
2 insurance available from the Insurance Carriers for claims related to damages arising from the
3 separate 2017 North Bay Fires and 2018 Camp Fire; (2) requiring the Reorganized Debtors and the
4 Insurance Carriers to permit the Trust to participate in any arbitration, judicial proceedings and/or
5 mediation that seeks to determine the nature, extent, or amount of available insurance coverage
6 available from the Insurance Carriers (or any other limitations on coverage) for claims asserted
7 against the former officers and directors arising from the separate 2017 North Bay Fires and 2018
8 Campfires; (3) enjoining the Reorganized Debtors and the Insurance Carriers from participating in
9 the arbitration hearing presently set for April 30, 2021 unless the Trust is permitted to participate and
10 directing all the Reorganized Debtors and the Insurance Carriers to the State Court to resolve ongoing
11 and future disputes pertaining to insurance coverage, or in the alternative, a declaration permitting
12 the Trust to participate in the arbitration hearing presently set for April 30, 2021.

13 8. On March 18, 2021, I attended a case management conference for the D&O Actions
14 in State Court. I advised Judge Cheng that the Trust had filed the Declaratory Relief Action and that
15 the Trust intended to file an *ex parte* application for a temporary restraining order to temporarily
16 delay the Arbitration until such time as the Court is able to hear a fully-noticed motion for preliminary
17 injunction to compel the Trust's participation in the arbitration pursuant to California law.

18 9. Counsel for the Reorganized Debtors also appeared at the case management
19 conference, confirmed that the Reorganized Debtors did not object to expedited consideration of the
20 Trust's *ex parte* application for a temporary restraining order, but advised the Court that the
21 Reorganized Debtors intended to remove the Declaratory Relief Action to this Court.

22 10. In response to the foregoing information, Judge Cheng set a March 25, 2021 deadline
23 for the parties to either (1) advise the Court if the Declaratory Relief Action had been removed or
24 (2) submit 5-page letter briefs addressing the *ex parte* relief sought in State Court.

25 11. If this Court does find that it has subject matter jurisdiction over the Declaratory Relief
26 Action (which we dispute and do not concede), I respectfully submit that all relevant factors support
27 abstention by this Court and remand to State Court in this matter, to wit: (i) the Trust has filed this
28 motion at its earliest opportunity—immediately after being served with Notice of Removal; (ii) the

1 underlying Declaratory Relief Action asserts a single California state law claim for declaratory relief
2 and is based on resolution of purely state law, including interpretation of the contracts that comprise
3 the D&O Policies and whether the Trust is an indispensable party in a dispute as to those D&O
4 Policies between the insurers and the insureds under established California law; (iii) the Declaratory
5 Relief Action is a non-core proceeding; (iv) there is no federal question involved in the Declaratory
6 Relief Action and the citizenship of the parties does not create diversity jurisdiction; (v) the
7 Declaratory Relief Action was filed in the California Superior Court, which is a state forum of
8 appropriate jurisdiction; and (vi) the Declaratory Relief Action can be timely adjudicated in the State
9 Court.

10 12. Importantly, with respect to the timely adjudication of the Declaratory Relief Action,
11 Judge Cheng set an expedited schedule to consider relief as soon as he was informed of the April 30,
12 2021 arbitration hearing and PG&E's counsel agreed to expedited consideration.

13 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
14 inquiry, the foregoing is true and correct and that this declaration was executed at Burlingame,
15 California, on March 29, 2021.

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17 /s/ Frank M. Pitre
18 Frank M. Pitre
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